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**IN THE
COURT OF APPEALS OF INDIANA**

BRENDA BOHLANDER,

Appellant-Petitioner,

vs.

KEITH E. BOHLANDER,

Appellee-Respondent.

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No. 48A05-0601-CV-46

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Dennis D. Carroll, Judge
The Honorable James O. Anderson, Master Commissioner
Cause No. 48D01-0303-DR-198

SEPTEMBER 25, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

HOFFMAN, Senior Judge

Petitioner-Appellant Brenda Bohlander (“Brenda”) appeals the trial court’s denial of her motion to correct clerical error. Respondent-Appellant Keith E. Bohlander (“Keith”) has filed a motion to strike a portion of Brenda’s appendix and brief. For the reasons stated below, we grant the motion to strike and affirm the trial court’s judgment.

The following issues are dispositive:

- I. Whether portions of Brenda’s appendix and brief should be stricken because they set forth and rely on “evidence” outside the record.
- II. Whether the trial court abused its discretion in denying Brenda’s motion to correct clerical error.

On November 22, 2004, the trial court approved and issued its Master Commissioner’s recommended findings of fact, conclusions of law, and judgment of dissolution pertaining to Brenda and Keith’s marriage. On December 20, 2004, Brenda filed a motion to correct error in which she alleged that the trial court failed to dispose of a stock account. The trial court did not rule on Brenda’s motion, but Keith filed a motion asserting that he had no objection to the correction of error.

On April 15, 2005, Brenda filed a motion pursuant to Indiana Rule of Trial Procedure 60(B) in which she alleged that the trial court failed to make an equal division of the marital property by not ordering Keith to pay her one-half of the value of the marital real estate. The trial court denied the motion on April 28, 2005.

On June 3, 2005, Brenda filed a motion to correct clerical error pursuant to Indiana Rule of Trial Procedure 60(A) in which she alleged that the trial court failed to make an equal division of the marital property by making a clerical error in determining the value of the marital real estate. The trial court denied the motion on September 28, 2005.

In this appeal from the trial court's denial of her motion to correct clerical error, Brenda relies on handwritten notations that were purportedly made by the Master Commissioner to proposed findings filed by Keith. Brenda alleges that the notations show that the Master Commissioner made a clerical error when he prepared the findings of fact and conclusions of law that were ultimately approved by the trial court.

Keith contends that we should strike the handwritten notations and proposed findings included in the appendix. He further contends that we should strike the pages of Brenda's brief referring to the notations. In support of this contention, Keith notes that the handwritten notations are not part of the record below, and they were neither placed nor offered into evidence at the 60(A) hearing.

We will reverse a trial court's denial of a motion to correct error only upon a showing of abuse of discretion. *Youngblood v. Jefferson County Div. Of Family and Children*, 838 N.E.2d 1164, 1168 (Ind. Ct. App. 2005), *trans. denied*. In reviewing the denial of such a motion, we may not consider matters outside the record, including factual material that was not made part of the record below. *Bowling v. Poole*, 756 N.E.2d 983, 987 n. 3 (Ind. Ct. App. 2001); *Boczar v. Meridian Street Foundation*, 749 N.E.2d 87, 92 (Ind. Ct. App. 2001). Documents not properly included in the record below are deemed outside the record, and they cannot be used in support of an appellant's arguments. *Schaeffer v. Kumar*, 804 N.E.2d 184, 187 n. 3 (Ind. Ct. App. 2004), *trans. denied*. Portions of an appellant's brief that refer to such documents are subject to a motion to strike. *Id.*

In the present case, both parties filed proposed findings of fact and conclusions of law with the trial court. However, the findings of fact and conclusions of law containing handwritten notations, which appear to be a copy of Keith's proposed findings and which are relied upon by Brenda in support of her 60(A) motion, are neither signed nor file-marked, and there is no indication that they are part of the record below. In short, there is no way to determine who made the notations. Furthermore, when given an opportunity to substantiate her motion at the hearing on the motion, Brenda did not do so. Instead, she relied on her bald assertion as support for the motion, and she offered no evidence. The notations are not a part of the record on appeal. We therefore grant Keith's motion to strike pages 22 through 42 of the appendix and those portions of Brenda's brief that refer to the notations.

Brenda claims that the trial court abused its discretion in denying her 60(A) motion. As a general rule, T.R. 60(A) permits the trial court to correct clerical errors in the record that arise from oversight or omission. *Keybank National Association v. Michael*, 770 N.E.2d 369, 375 (Ind. Ct. App. 2002), *trans. denied*. In the case of clearly demonstrable mechanical errors, the interest of fairness outweighs the interest of finality that attends the prior adjudication. *Id.* If the error is one of substance, however, the finality principle controls, and a 60(A) motion should not substitute for a motion to correct error and direct appeal under Trial Rule 59. *Id.* "Clerical error" has been defined as "a mistake by a clerk, counsel, judge, or printer that is not a result of judicial function and [that] cannot reasonably be attributed to the exercise of judicial consideration or discretion." *Id.*

The crux of Brenda’s argument in her brief is that the trial court’s clerical error is shown by the notations on the unsigned copy of Keith’s proposed findings of fact and conclusions of law. Because these notations have been stricken, and because there is no evidence to support her claim of clerical error, Brenda’s argument now consists of her contention that the trial court failed to make an equal distribution of marital property.¹ Brenda previously made this contention, and it should have been raised in a direct appeal or after the denial of her 60(B) motion, not in an appeal of a subsequent 60(A) motion. Thus, the trial court did not abuse its discretion in denying the motion.

Affirmed.

BAILEY, J., and CRONE, J., concur.

¹ We note that Brenda has mischaracterized the trial court’s conclusions. The trial court stated, “there is no evidence before the Court to justify an unequal division of the estate, *except as herein expressly provided in the Court’s findings.*” See Appellant’s App. at 48. (emphasis supplied).